SUPPORT FOR THE AMENDMENTS

The present amendment cancels claims 19-25, amends claims 16 and 34, and adds new claims 37-42.

Support for the amendment to claims 16 and 34, and newly added claims 37-42, is found at specification page 9, lines 15-21.

It is believed that these amendments have not resulted in the introduction of new matter.

REMARKS

Claims 16-18 and 26-42 are currently pending in the present application. Claims 19-25 have been cancelled, claims 16 and 34 have been amended, and new claims 37-42 have been added, by the present amendment. Claims 34-36 stand withdrawn from consideration by the Examiner as being directed to a non-elected invention.

Applicants wish to extend their appreciation to Examiner Mi for withdrawing the rejection of claims 16-18, 32 and 33 under 35 U.S.C. § 102(b) in response to the Pre-Appeal Brief Request for Review filed on September 11, 2008.

The rejection of claims 16-33 under 35 U.S.C. § 103(a) as being obvious over Noble (U.S. Patent 5,484,611) in view of McCleary (U.S. 2002/0182196) and Bydlon (U.S. 2003/0050341) is obviated by amendment, with respect to claims 16-18 and 26-42, which incorporates the limitation that the weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1 into claim 16.

Amended claim 16 is directed to a composition comprising: a phospholipid having an n-3 polyunsaturated fatty acid constituent selected from the group consisting of docosahexaenoic acid, docosapentaenoic acid and eicosapentaenoic acid; and α-linolenic acid, wherein a weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1.

New claims 37-42 are directed to the composition according to claim 16, wherein the weight ratio of the α-linolenic acid to the phospholipid is 0.25-10:1, 0.5-4:1, 0.75-2:1, 2-20:1, 4-20:1 and 10-20:1, respectively.

Noble, McCleary and Bydlon, when considered alone or in combination, fail to disclose or suggest a composition comprising, as separate and distinct components, α-linolenic acid and a phospholipid in accordance with the present invention, wherein the weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1, as presently claimed.

Noble describes a composition comprising a mixture of phosphatidyl serine, phosphatidyl choline and phosphatidyl inositol phospholipids having DHA and 18:3(n-3) linolenic acid (a.k.a., α-linolenic acid) as fatty acid constituents thereof (See e.g., column 1, lines 45-52, column 2, lines 12-17 and 25-30, column 3, Table 1 and lines 24-65, and claims 1 and 9). Since the α-linolenic acid is a fatty acid constituent of the phospholipid, Noble fails to disclose or suggest the composition of the present invention comprising the following two separate and distinct components: (1) a phospholipid having an n-3 polyunsaturated fatty acid constituent selected from the group consisting of DHA, docosapentaenoic acid and eicosapentaenoic acid; and (2) α-linolenic acid, wherein a weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1, as presently claimed.

McCleary describes a composition for normalizing impaired or deteriorating neurological function which may comprise: phosphatidyl serine; DHA; and γ-linolenic acid (GLA) (See e.g., abstract, [0131] and [0177]). McCleary fails to describe that the DHA is a fatty acid constituent of the phospholipid. In addition, the *alpha*-linolenic acid of the claimed composition is fundamentally different from the *gamma*-linolenic acid described in McCleary. Therefore, McCleary fails to disclose or suggest the composition of the present invention comprising the following two separate and distinct components: (1) a phospholipid having an n-3 polyunsaturated fatty acid constituent selected from the group consisting of DHA, docosapentaenoic acid and eicosapentaenoic acid; and (2) α-linolenic acid, wherein a weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1, as presently claimed. As a result, McCleary fails to compensate for the above-mentioned deficiencies of Noble.

Bydlon describes a composition comprising DHA, which is useful for treating the central nervous system, preventing Alzheimer disease and dementia in the elderly, preventing heart disease and lowering the level of undesirable triglycerides in the blood (See e.g., [0008]). Bydlon describes that DHA may be obtained from a plethora of various natural oils including, but not limited to,

flaxseed oil (a.k.a., linseed oil), canola oil (a.k.a., rapeseed oil), vegetable oil, safflower oil, sunflower oil, nasturtium seed oil, mustard seed oil, olive oil, sesame oil, soybean oil, corn oil, peanut oil, cottonseed oil, rice bran oil, babassu nut oil, palm oil, low erucic rapeseed oil, palm kernel oil, fish oil and marinol oil (See e.g., [0024], [0025]). Bydlon describes that the natural oils themselves may be incorporated into the composition as a source of DHA because these oils, especially fish oil and marinol oil, often contain DHA in concentrated amounts thereby providing desirable DHA levels in the composition (See e.g., [0025]).

Bydlon fails to disclose or suggest using the natural oils as sources of α-linolenic acid. Bydlon also fails to disclose or suggest which of the various natural oils described therein actually contain high concentrations of α-linolenic acid. Therefore, while Bydlon describes that the natural oils are used as sources of DHA, Bydlon fails to provide a skilled artisan with sufficient motivation and guidance to particularly select specific natural oils (e.g., flaxseed/linseed oil) that contain high concentrations of α-linolenic acid from either the tremendously large genus of natural oils, or the preferred natural oils, described therein.

Moreover, while Bydlon describes incorporating a natural oil comprising DHA into a composition, Bydlon fails to disclose or suggest incorporating α-linolenic acid into a phospholipid composition, wherein a weight ratio of α-linolenic acid to the phospholipid is 0.1-20:1, as presently claimed. As a result, Bydlon fails to compensate for the above-mentioned deficiencies of Noble.

Applicants respectfully submit that a skilled artisan would not have been motivated to use a specific natural oil described in Bydlon as a source of α-linolenic acid for incorporation into the phospholipid composition of Noble in an amount sufficient to arrive at the claimed weight ratio of the α-linolenic acid to the phospholipid of 0.1-20:1, 0.25-10:1, 0.5-4:1, 0.75-2:1, 2-20:1, 4-20:1 or 10-20:1, as recited in claims 16 and 37-42, respectively, absent impermissible hindsight reconstruction.

Since Noble, McCleary and Bydlon, when considered alone or in combination, fail to disclose or suggest a composition comprising, as separate and distinct components, α-linolenic acid and a phospholipid in accordance with the present invention, wherein the weight ratio of the α-linolenic acid to the phospholipid is 0.1-20:1, as presently claimed, Noble, McCleary and/or Bydlon fail to render obvious the composition of the present invention.

Withdrawal of this ground of rejection is respectfully requested.

The Examiner is respectfully reminded that upon a determination that the product claims drawn to the elected invention are found allowable, method claims drawn to the non-elected invention should be rejoined and examined for patentability, pursuant to MPEP § 821.04 and *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995).

In conclusion, Applicants submit that the present application is now in condition for allowance and notification to this effect is earnestly solicited.

Respectfully submitted,

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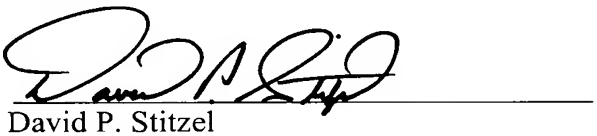

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